



March 2, 2001

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2001-0821

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144689.

The Office of the Attorney General (the "OAG") received a request for records of the OAG's Crime Victims' Compensation Division that pertain to "all correspondence [and] any investigation on any and all of the matters reported to your Austin, Texas office." You claim that portions of the requested information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

The requested information includes offense reports from the City of Houston, the City of Pasadena, and the City of Bellaire that were submitted to the OAG's Crime Victims Compensation Division. The information in question also includes three different applications for compensation filed with the OAG's Crime Victims Compensation Division and various other documents that pertain to these applications.

Section 552.108 of the Government Code, the "law enforcement exception," excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You have submitted written arguments from the City of Houston, the City of Pasadena, and the City of Bellaire regarding the offense reports at issue.

The City of Houston states that report number 115119800 pertains to a pending criminal matter. Based on this representation, we find that the release of that report would interfere with an ongoing criminal case, and therefore that report is subject to section 552.108(a)(1). The City of Houston does not raise an objection to release of submitted report number 101663200, however, and we therefore have no basis for finding that it is subject to section 552.108.

The City of Pasadena explains that report number 200039917 pertains to a criminal matter that is currently inactive but that could be "reopened" should relevant information be developed or provided. We interpret this to mean that the report pertains to a criminal matter that remains pending. Accordingly, we find that the release of this report would interfere with an ongoing criminal case, and therefore, the report is subject to section 552.108(a)(1).

The City of Bellaire explains that report number 991204-0274 pertains to an open criminal investigation. Based on this representation, we find that the release of this report would interfere with an ongoing criminal case, and therefore, the report is subject to section 552.108(a)(1).

We thus conclude that the OAG may withhold, under section 552.108(a)(1), report number 115119800 from the City of Houston, report number 200039917 from the City of Pasadena, and report number 991204-0274 from the City of Bellaire. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision Nos. 474 at 4-5 (1987), 372 at 4 (1983) (both stating that any proper custodian of information relating to an incident involving allegedly criminal conduct that is under active investigation or prosecution may invoke section 552.108). Report number 101663200 from the City of Houston is not excepted from disclosure under section 552.108 and must be released.

We also note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. Thus, the OAG must release to the requestor the kind of information that is considered to be basic front-page information, including a detailed description of the offense, even if this information does not actually appear on the front page of the offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We further note that the OAG ordinarily would be required to withhold the identity of the victim identified in each of the submitted offense reports under section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that comes within the common law right to privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law

privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court held that information that relates to, among other things, sexual assault is intimate and embarrassing and is generally of no legitimate public interest. *Id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982). The offense reports at issue here all concern allegations of sexual assault, and therefore the sexual assault victim's privacy rights are implicated.

In this instance, however, the requestor is the alleged victim of sexual assault. Under section 552.023 of the Government Code,

[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

Gov't Code § 552.023(a). Due to this special right of access, the information that the OAG must release to the requestor includes the information that identifies the alleged victim.

We next address the rest of the submitted records, which consist of applications for crime victim compensation and related documents. The Seventy-sixth Legislature amended chapter 552 of the Government Code by adding section 552.132, which provides as follows:

(a) In this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and

(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

(d) If the crime victim elects not to allow public access to the information, the information is excepted from the requirements of Section 552.021. If the crime victim does not make an election under Subsection (b) or elects to allow public access to the information, the information is not excepted from the requirements of Section 552.021 unless the information is made confidential or excepted from those requirements by another law.

(e) If the crime victim is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded to that victim are public information and are not excepted from the requirements of Section 552.021.

Gov't Code § 552.132. We interpret section 552.132 to afford crime victims or claimants three years from the date of filing an application for compensation in which to submit an election for disclosure or non-disclosure. *See* Gov't Code § 552.132(c)(2). Once the three years have elapsed, if the crime victim or claimant has not made an election or has elected to allow public access to the information, the information described in section 552.132(b) may not be withheld, unless it is made confidential or excepted from those requirements by another law. *See id.* § 552.132(d). However, during those three years, we find that the information is excepted from required disclosure under section 552.132 where a crime victim or claimant has not yet submitted an election for non-disclosure. *See id.* § 552.132(c)-(d).

In this instance, you do not state whether the crime victim has submitted an election for non-disclosure. However, because three years have not elapsed since the dates that the crime victim filed the applications for compensation, we find that if no election form has been submitted under section 552.132(b), the OAG ordinarily would be required to withhold the types of information described by section 552.132(b).¹ But as explained above, because the requestor in this instance is the crime victim, she has a special right of access to this information under section 552.023. Therefore, in this case, the OAG must release the application materials to the requestor with the one exception noted below.

One document submitted with the application materials is a medical record that is subject to the Medical Practice Act (the "MPA"), as codified by the Seventy-sixth Legislature at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 552.101 of the Government Code excepts from disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision," and thus encompasses confidentiality provisions such as those found in the MPA. The MPA provides in relevant part:

¹Here, it is apparent from the submitted documents that the crime victim who is the subject of the request has been denied compensation, and therefore, section 552.132(e) is inapplicable.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990).² Thus, the MPA governs access to medical records. *See* Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); ORD 598. We have marked the medical record contained in the submitted documents. The OAG may release this document only in accordance with the MPA.³

In conclusion, the OAG may withhold offense report numbers 115119800, 200039917, and 991204-0274 under section 552.108(a)(1) of the Government Code. However, the OAG must release the front-page information from these reports under section 552.108(c). The OAG may release the medical record that we have marked only if permitted to do so under the Medical Practice Act. The OAG must release the remainder of the submitted information, including offense report number 101663200, to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

²Inasmuch as the Seventy-sixth Legislature intended no substantive change in the law in codifying the Medical Practice Act at subtitle B of title 3 of the Occupations Code, open records decisions interpreting the former section 5.08 of article 4495b of Vernon's Texas Civil Statutes retain their relevance. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 7, 1999 Tex. Gen. Laws 1431, 2440.

³*See* Occ. Code §§ 159.004(5), 159.005(1) (providing that otherwise confidential medical information may be released to a person who bears a written consent of the patient, subject to certain requirements).

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

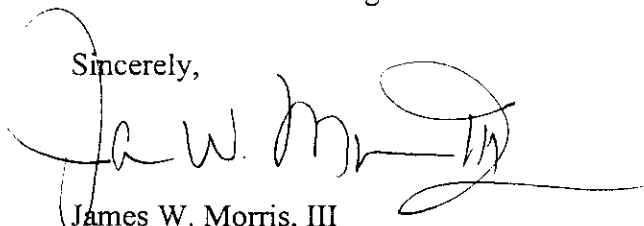
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144689

Encl: Marked documents